

MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SEATTLE; U.S. FISH AND WILDLIFE SERVICE; AND
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S (NOAA),
NATIONAL MARINE FISHERIES SERVICE

1. PURPOSE/OBJECTIVES

This Memorandum of Understanding (MOU) is made and entered into by the City of Seattle (the City), the NOAA's National Marine Fisheries Service (NOAA Fisheries), and the U.S. Fish and Wildlife Service (FWS), collectively referred to as "the Parties." The FWS and NOAA Fisheries are collectively referred to as the "resource agencies."

The resource agencies have the responsibility to protect and perpetuate fish and wildlife under their jurisdiction, and the City has responsibility to develop and maintain properties in the City, including a wide range of construction projects. The City's projects frequently involve fish habitat and therefore require frequent coordination and consultation with the resource agencies. Because of the heavy workload related to consultation under Section? Of the ESA (16 U.S.C. § 1536), the Fish and Wildlife Coordination Act, and the Magnuson Stevens Fishery Conservation Act (MSA), it is practical for local governments to provide funds to the resource agencies to perform certain duties related to consultation. In this case, the funds will be provided to the FWS (under a separate agreement) to obtain a federal employee (staff biologist) who will be primarily assigned to the study and evaluation of the City's projects for compliance with the ESA and other pertinent laws administered by the resource agencies.

The purpose of this MOU is to establish a three-way relationship whereby NOAA Fisheries will provide office space, office supplies and use of office equipment for the FWS employee (staff biologist) hired under the separate agreement between FWS and Seattle (described above); and the staff biologist will consult on City projects for both of the resource agencies. Benefits derived from this MOU are increased coordination, streamlined consultation, early project-level planning assistance to increase compatibility of city projects with anadromous fish conservation, and shared information. No preferential treatment by the resource agencies is given or should be inferred under this MOU.

II. AUTHORITY

The resource agencies enter into this MOU pursuant to the authority of the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Fish and Wildlife Coordination Act, 16 U.S.C. § 2901-2911; and the Magnuson Stevens Fishery Conservation Act 16 U.S.C. § 1801 et seq. in order to ensure that the resource agency consultations for City projects relevant to those Acts are conducted in an efficient manner to promote conservation of listed species and their habitat.

MOU Between
Seattle, USFWS & NOAA-Fisheries
February 2007 - February 2013

III. TERMS OF MOU

This MOU shall become effective upon signature of the Parties and remain in effect until February 28, 2013. The MOU may be revised or renewed upon written agreement of the Parties.

Any Party may, upon providing 30 days written notice to the other Parties, terminate this MOU in its entirety. In the event this MOU is terminated in its entirety, the City will make payments to the FWS for work performed on their respective projects up to the date of termination. Any remaining balance on the accounts shall be returned to the City.

IV. SPECIFIC OBLIGATIONS OF THE PARTIES

1. The FWS shall:

(1) In accordance with a separate agreement between FWS and the City, the FWS shall provide a qualified GS-12 biologist (staff biologist) to consult with and assist the City in complying with the requirements of Section 7 of the ESA, the Fish and Wildlife Coordination Act, and the MSA. The staff biologist shall provide expedited Section 7 consultation, document review and project coordination on applicable City projects to assure compliance with both FWS and NOAA requirements.

(2) Provide appropriate travel, training, guidance and supervision, and associated equipment needed by the biologist to conduct reviews of City projects and to perform needed analyses for FWS.

(3) Work closely with the City technical representatives in evaluating proposed City Actions taken in furtherance of this provision include, but are not limited to, (a) participating in onsite project evaluations and briefings with City technical representatives and the Corps of Engineers; (b) reviewing and commenting on draft technical reports and assessments in furtherance of this MOU; (c) providing draft concurrence letters and biological opinions to the federal action agencies, and to the City, upon approval by the action agencies, for review and comment, as appropriate; and (d) participating in monthly permit coordination with the City and the Seattle District Corps of Engineers.

2. The City shall:

(1) Agree that the staff biologist funded under a separate agreement with the FWS will split his/her time approximately equally between projects under the purview of each of the two resource agencies.

MOU Between
Seattle, USFWS & NOAA-Fisheries
February 2007 - February 2013

(2) Coordinate work priorities and schedules with the resource agencies.

3. NOAA Fisheries shall:

(1) Provide office space, common office supplies, and use of office equipment for the staff biologist in their Seattle office. Administrative support will be provided as is currently available to the Washington Habitat Branch North Puget Sound team. NOAA Fisheries will provide input to the FWS on the staff biologist's performance, and may provide additional guidance as needed in consultation with the FWS supervisor.

(2) Provide guidance to and coordination with the staff biologist to assist the City to comply with the ESA and MSA. The staff biologist will work primarily on City projects which will result in expedited document review and project coordination on applicable City projects.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:

A. All parties to this MOU will meet as needed but no less than once annually to assess accomplishments and expectations.

B. Support of all parties shall be acknowledged in publications and audiovisuals.

C. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. In addition, the terms of this MOU maybe renewed, amended, altered, clarified, or extended only upon the written agreement of the parties.

D. This MOU is a working relationship and does not infer any financial obligations on the part of any of the parties. NOAA Fisheries does agree, however, to provide office space and minimal office supplies as described above. A separate agreement between the City and the FWS spells out the financial arrangement between the two for the funding of the staff biologist position.

E. Nothing in this MOU between the City of Seattle, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall be construed as limiting or expanding the statutory or regulatory responsibilities of any involved individual in performing functions granted to them by law; or as requiring any of the entities to expend any sum in excess of its respective appropriation.

F. Each and every provision of this MOU is subject to the laws and regulations of the City of

MOU Between
Seattle, USFWS & NOAA-Fisheries
February 2007 - February 2013

Seattle, the State of Washington, and the United States. To the extent that Federal law conflicts with City or State law, the federal agencies must comply with the Federal law.

G. Nothing in this MOU shall be construed as expanding the liability of any of the parties. In the event of a liability claim, each party shall defend its own interests.

H. By entering into this MOU, no Party shall be deemed to have made any admission or waived any contention of fact or law relating to subsequent legal proceedings. This MOU shall not be offered in evidence or cited as precedent by any Party to this MOU in any administrative or judicial litigation, arbitration, or other proceeding, except a proceeding to establish the existence of or to enforce or implement this MOU. This subsection shall survive any termination of this MOU.

VI. PROJECT OFFICERS

A. For the FWS:

John Grettenberger, Manager
Transportation Planning Branch
U.S. Fish and Wildlife Service
510 Desmond Drive, Suite 102
Lacey, Washington 98503
Phone: 360-753-5831

B. For the City of Seattle:

Joy Keniston-Longrie, Director
Major Interagency Projects Division
Seattle Public Utilities
Seattle Municipal Tower
700 Fifth Ave, Suite 4900
P.O. Box 34018
Seattle, Washington 98124-4018
Phone 206-684-5972

C. For NOAA Fisheries

Dr. Thomas Sibley
Washington Habitat Branch
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070
Phone: 206-526-4446

MOU Between
Seattle, USFWS & NOAA-Fisheries
February 2007 - February 2013

IN WITNESS WHEREOF, the Parties have executed this MOU by having their representative affix their signature below.

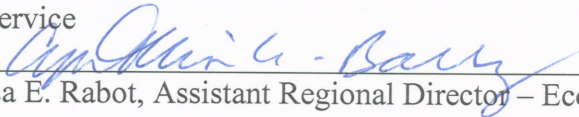
City of Seattle

Name, Title: 
Chuck Clarke, Director, Seattle Public Utilities

Date: 2/23/07

U.S. Fish and Wildlife Service

Name, Title:


for Theresa E. Rabot, Assistant Regional Director – Ecological Services

Date: 2/5/07

NOAA Fisheries

Name, Title:

Barry Thom, Deputy Regional Administrator

Date: _____

AGREEMENT BETWEEN CITY OF SEATTLE AND DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		1. CITY OF SEATTLE #:		NS 10198 – Modification 1
		2. FWS AGREEMENT #:		13410-1901-1003
		3. TOTAL AGREEMENT AMOUNT:		
		4. EFFECTIVE DATE:		When Signed
5a. CITY OF SEATTLE <small>[ADDRESS, OFFICE]</small> Seattle Public Utilities Key Tower, Suite 4900 700 Fifth Avenue 45 th Floor Seattle, Washington 98104-5004		6a. FWS DATA <small>[ADDRESS, OFFICE]</small> Western Washington Office U.S. Fish and Wildlife Service 510 Desmond Drive S.E., Suite 102 Lacey, Washington 98503-1273		
5b. Select One: <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller		6b. Select One: <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller		
5c. DUNS # 5d. ALC#	N/A	6c DUNS 6d: ALC:	N/A	
7. PROJECT TITLE: Technical Assistance for the City of Seattle				
8. SCOPE OF WORK <small>[DETAIL THE SPECIFIC OBLIGATIONS OF EACH PARTY - USE ADDITIONAL PAGE(S) IF NECESSARY]</small> See original agreement				
9. SPECIAL PROVISIONS: (1) THIS AGREEMENT MAY BE MODIFIED BY MUTUAL CONSENT OF BOTH PARTIES. (2) IT MAY BE TERMINATED BY 30-DAY PRIOR WRITTEN NOTICE BY EITHER PARTY. ALLOWABLE COSTS INCURRED THROUGH DATE OF TERMINATION SHALL BE REIMBURSED UNDER THIS AGREEMENT. Purpose of amendment is to modify the following: # 2 - FWS number is 13410-1901-1003 # 11 - Project Manager – Change from Lynn Childers to John Grettenberger, Program Manager (address remains the same) # 12 - Extension of agreement – Change from December 2008 to December 2013 # 13 - Change from \$120,000 per year to \$120,000 plus Cost of Living Allowance – If the Service indirect rate increases based on the bi-annual review, an amendment will be required to adjust the funding increase as well as the project number. #14d – Billing Contact – Change from Michelle Dvorcek to Karen McCurry, Budget Technician (address remains the same) All other terms and conditions remain unchanged.				
10. CITY OF SEATTLE PROJECT OFFICER <small>[NAME, OFFICE, ADDRESS, PHONE, FAX, E-MAIL]</small> Joy Keniston-Longrie, Director Major Interagency Projects, Federal Permits & SEPA Official Key Tower, Suite 4900 700 Fifth Avenue, 49 th Floor P.O. Box 34018 Seattle, Washington 98124-4018 Phone 206-684-5972		11. FWS PROJECT OFFICER <small>[NAME, OFFICE, ADDRESS, PHONE, FAX, E-MAIL]</small> John Grettenberger, Program Manager Western Washington Fish & Wildlife Service 510 Desmond Drive, SE, Suite 102 Lacey Washington 98503-1273 Phone 360-753-9440		
12. PERIOD OF PERFORMANCE: December 2013				

14a. METHOD OF PAYMENT AND BILLING INSTRUCTIONS:

See original agreement - Terms and conditions remain unchanged with the exception of the project number noted on the payment which will now be **1901-1003**.

14b. BILLING SCHEDULE: [SELECT ONE] ____ MONTHLY, ____ QUARTERLY, ____ SEMI-ANNUALLY, **X** OTHER [SPECIFY]
Advance payments per original agreement.

14c. CITY OF SEATTLE BILLING CONTACT

[NAME, OFFICE, ADDRESS, PHONE, FAX, E-MAIL]

Melina Thung, Director of Finance
Seattle Public Utilities
Key Tower, Suite 4900
700 Fifth Ave, 49th Floor
Seattle, Washington 98104-5004
Phone: (206) 684-0958

14d. FWS BILLING CONTACT

[NAME, OFFICE, ADDRESS, PHONE, FAX, E-MAIL]

Karen McCurry, Budget Technician
Western Washington Fish & Wildlife Service
510 Desmond Drive, SE, Suite 102
Lacey, Washington 98503-1273
Phone: (360) 753-9510

15. AUTHORITY: [CITE APPLICABLE AUTHORITY TO ENTER INTO THIS AGREEMENT; I.E. ECONOMY ACT OF 1932 (31 USC 1535)]

See original agreement (terms and conditions remain unchanged).

16a. AUTHORIZING OFFICIAL FOR CITY OF SEATTLE

[NAME, TITLE, ADDRESS, PHONE]

Chuck Clark, Director
Seattle Public Utilities

16b. AUTHORIZING OFFICIAL SIGNATURE**16c. DATE**

2/23/02

16d. AUTHORIZING OFFICIAL FOR FWS

[NAME, TITLE, ADDRESS, PHONE]

Theresa Rabot *for*
Assistant Regional Director, Ecological Services
U.S. Fish and Wildlife Service, Region 1
911 NE 11th Avenue
Portland, OR 97232-4181
(503) 231-6151

16e. AUTHORIZING OFFICIAL SIGNATURE**16f. DATE**

2/5/02